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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,189	04/16/2004	Patrick Scholten	P10670.01	9794
27581	7590	07/07/2006	EXAMINER	
MEDTRONIC, INC. 710 MEDTRONIC PARK MINNEAPOLIS, MN 55432-9924			ALTER, ALYSSA M	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/826,189

Applicant(s)

SCHOLTEN ET AL.

Examiner

Alyssa M. Alter

Art Unit

3762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

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JEFFREY A. JASTRAZAK
PATENT EXAMINER
7/5/06

Continuation of 11. does NOT place the application in condition for allowance because: The Applicant again argues the Florio et al. does not delivery a pacing pulse to a given chamber, sense within that chamber and determine, based upon morphological characteristics whether the pacing pulse captures that chamber of the heart.

However, as previously stated in the Office Action dated April 14, 2006, Florio et al. discloses on page 3, paragraph 25, the "present invention is capable of sensing a composite cardiac signal on a single sense channel that has, inherent in it, characteristics that permit the detection of non-capture, single-chamber capture, and bi-chamber capture. While the illustrated embodiments are directed towards a bi-ventricular stimulation device, the present invention can be equally applied in a bi-atrial mode of stimulation".

"The IEGM characteristics for non-capture, single-chamber capture and bi-ventricular capture are compared to newly acquired IEGM waveforms during normal operation of the stimulation device, to determine whether the newly acquired IEGM represents failed capture, single-chamber capture, or bi-ventricular capture". [0027]

Also, "sampled IEGM waveforms during both single-chamber capture and bi-ventricular capture are processed by a morphology detector that measures and stores defining characteristics of the single-chamber capture and bi-ventricular capture. For example, peak detection, slope detection, waveform integration, and timing interval estimation can be performed with results stored in memory. Then, during normal operation of the stimulation device, a newly sampled IEGM waveform can be processed in the same way to allow comparison of its waveform characteristics to single-chamber capture or bi-ventricular capture characteristics. In this way, reliable and automatic detection of capture during bi-ventricular pacing is achieved" page 3, paragraph 28).

Florio et al. also further discloses on page 8, paragraph 103, "One or more of these IEGM characteristics are then used by the method of the present invention, as it will be described below, in order to distinguish between single-chamber capture, bi-ventricular capture, or complete loss of capture, based on comparisons made between an acquired IEGM during normal stimulation device operation and the known characteristics of the IEGM during the three capture situations".

Therefore, Florio et al. does disclose the use of morphological analysis to determine whether capture has occurred and thus the rejection still stands.